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In the
Supreme Court of the United States

October Term, 1969

No. 774

LUCRETIA PETEROS RICHARDSON,
APPELLANT,

v.

DR. JONATHAN O. COLE, Superintendent,
Boston State Hospital

and

DR. MILTON GREENBLATT, Commissioner,
Department of Mental Health,
Commonwealth of Massachusetts,
APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JURISDICTIONAL STATEMENT

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Jurisdictional Statement

Appellant Lucretia Peteros Richardson submits this jurisdictional statement pursuant to Rule 15. Reference will be made from time to time to the jurisdictional statement filed on September 29, 1969 by the Attorney Gen-

eral of Massachusetts on behalf of Dr. Jonathan O. Cole, et al., appellants in that case, No. 679, and appellees in this cross-appeal.

Opinion Below

At the time of the preparation of this statement the opinion of the United States District Court for the District of Massachusetts is unreported. Copies of that opinion and of the court's judgment and injunction, both entered on June 26, 1969, are annexed in the appendix to the jurisdictional statement in case No. 679, at pages 27-31.

Jurisdiction

This is an appeal from the judgment and injunction of a three-judge district court convened pursuant to 28 U.S.C. §§ 2281 and 2284. In the court below the plaintiff-appellant, Lucretia Peteros Richardson, sought an injunction and damages under 28 U.S.C. §§ 1331 and 1343 (3) and 42 U.S.C. § 1983, claiming that she had been denied continued employment at Boston State Hospital, a state institution of the Commonwealth of Massachusetts, because of her refusal to take and subscribe to a loyalty oath required of all state employees by a Massachusetts statute.

On June 26, 1969 the court entered its judgment and injunction and filed concurrently therewith its opinion, declaring the statute in question to be in violation of the Constitution of the United States and enjoining the defendant from prohibiting the plaintiff from discharging her duties at the state institution insofar as such prohibition might be based on her refusal to take the invalid oath. However, the court did not grant the appellant's request for damages for her uncompensated employment, stating simply in the last line of its opinion that "We cannot grant her request for back pay."

Appellant filed a notice of appeal in the United States District Court for the District of Massachusetts on August 25, 1969. (On July 30, 1969 appellees in this appeal filed a notice of appeal in the same court, case No. 679.)

This Court has jurisdiction of this appeal by virtue of 28 U.S.C. §§ 1253 and 2101(b).

The validity of a state statute is not involved in this appeal. (In the appeal by the defendants, No. 679, the state statute prescribing the loyalty oath declared unconstitutional by the three-judge court is set forth at pages 2-3 of their jurisdictional statement.)

Question Presented

Did the three-judge court err in refusing to grant appellant's claim for back pay?

Statement of the Case

The defendant-appellee, Dr. Jonathan O. Cole, is Superintendent of Boston State Hospital, a state institution. The defendant-appellee, Dr. Milton Greenblatt, is Commissioner of Mental Health for the Commonwealth of Massachusetts. Plaintiff-appellant Lucretia Peteros Richardson was employed as a research sociologist at Boston State Hospital commencing work on September 30, 1968. On November 15, 1968 during her employment processing Mrs. Richardson was advised by the personnel department of Boston State Hospital that her employment could not be continued until and unless she signed an oath as required by Massachusetts General Laws, c. 264 § 14, as follows:

> "I do solemnly swear (or affirm) that I will uphold and defend the Constitution of the United States of

America and the Constitution of the Commonwealth of Massachusetts and that I will oppose the overthrow of the Government of the United States of America or of this Commonwealth, by force, violence or by any illegal or unconstitutional method."

Mrs. Richardson refused to take the oath.

On November 25, 1968 Mrs. Richardson again refused to take the oath. Her employment at Boston State Hospital was thereupon terminated. She was paid for her services from September 30, 1968 through November 25, 1968. Thereafter Mrs. Richardson continued to work from time to time on the research project at the state institution, for which work she was not compensated.

By complaint filed March 21, 1969 Mrs. Richardson brought an action in the United States District Court for the District of Massachusetts alleging the unconstitutionality of the statue, G.L. c. 264 § 14, and praying for the convening of a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284, an injunction against her being prohibited from continuing her employment, for damages for her uncompensated employment and for such other relief as to the court might seem just.

On May 16, 1969 counsel for both sides submitted a stipulation as required by the pre-trial order of the district court of May 7, 1969. The paragraphs of that stipulation relevant to this appeal are as follows:

"8. Plaintiff volunteered to work full-time at Boston State Hospital from November 25, 1968 to December 20, 1968; without pay, in order to continue her research project. Plaintiff was subsequently paid for her services from September 30, 1968 to November 25, 1968. From January 27, 1969 to the present date, Plaintiff has worked at approximately one-third full time at Boston State Hospital on her research project.

"9. Plaintiff is ready, willing and able to recommence her employment at Boston State Hospital but her refusal to take the oath required by M.G.L. c. 264 § 14, represents an absolute bar to such employment. The project for which Plaintiff was hired is still ongoing at Boston State Hospital."

On June 26, 1969 the district court upon consideration of the complaint, the answer of the defendants, the stipulation of facts, and the briefs and arguments of counsel, held unconstitutional and enjoined the operation of Massachusetts General Laws c. 264 § 14. In its judgment and injunction of June 26, 1969, the district court ordered, adjudged and decreed:

"(a) that section 14 of chapter 264 of the General Laws of Massachusetts violates the First Amendment of the Constitution of the United States and is therefore invalid; and

"(b) that the defendants be, and they are hereby, permanently enjoined from prohibiting the plaintiff from discharging her duties at the Boston State Hospital insofar as such prohibition is based upon her refusal to take the oath required by said section 14 of chapter 264 of the General Laws of Massachusetts."

The judgment, however, made no mention of the appellant's claim for damages, the court stating simply at the end of its opinion that it could not grant the plaintiff's request for back pay.

Appellant Richardson filed notice of appeal in the United States District Court for the District of Massachusetts on August 25, 1969.

The Question Presented is Substantial.

The question presented by this appeal is substantial, involving whether a federal court has done and can do

full justice in vindicating constitutional rights by declaring a statute void and enjoining its operation, yet refusing without any assignment of grounds, to give the relief in money damages which should by right be a consequence of that declaration and injunction.

Initially the question of whether the appellant is entitled to damages is a question of substantive state law. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938). Under Massachusetts law there is no question that appellant is entitled to damages. The basic rule for recovery on an employment contract by a state employee wrongfully discharged is that he is entitled to the balance of the contract price. *McKenna v. Commissioner of Mental Health*, 347 Mass. 674, 199 N.E. 2d (1964).

In the instant case it was stipulated that the appellant was "ready, willing and able to recommence her employment" (Stipulation, ¶ 9). The plaintiff should therefore be given the full damages accruing to her by virtue of her wrongful discharge from a job which was conceded to be "still on-going" on the date of the filing of the stipulation (Stipulation, ¶ 9).

It was well within the competence of the federal court in Massachusetts to give appellant the relief she is asking for. In *Thompson v. Shapiro*, U.S. , 22 L.Ed. 600 (1969) this Court affirmed three-judge federal courts in three different districts (and approved decisions by federal courts in four other districts) declaring the residency requirements in state welfare statutes unconstitutional and ordering that AFDC claimants not be refused payment by virtue of those requirements. In the Connecticut case the majority dealt briefly with an objection to the relief given on the basis of sovereign immunity. Concluding that "this Court can order Commissioner Shapiro to tender [state] monies which he unconstitutionally withheld . . ." the court cited *Department of Employment v. United*

States, 385 U.S. 355 (1966), and other cases to the effect that a state official derives no immune status from his official position when acting in an unconstitutional manner. *Thompson* v. *Shapiro*, 270 F.Supp. 331, 338 n.5 (D. Conn. 1967).

The state courts of Massachusetts similarly will not refuse to order a public official to dispense public funds to a present or former state employee when those funds would have been dispensed in the normal course if the law had been adhered to. *McKenna* v. *Commissioner of Mental Health*, 347 Mass. 674, 199 N.E. 2d 686 (1964).

Finally, the district court should have no difficulty in fashioning a decree for back pay from December 20, 1968. See, *e.g.*, order for decree in *Thompson* v. *Shapiro*, *supra*, 270 F.Supp., at 338.

For the reasons above stated, appellant submits that the court below erred in declaring the discharge of the appellant to be invalid and wrongful under the Constitution and then in denying her the damages naturally and necessarily resulting from that wrongful discharge. This Court has jurisdiction on direct appeal to review the action of the three-judge court, and it should exercise that jurisdiction to insure that full justice is done.

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